

REMARKS**Amendments to the Claims**

Applicants presently amend claim 1 to include the following limitations: the user metrics represent indications of user conditions, wherein the user condition is selected from the group consisting of body temperature, blood pressure, heart rate, and galvanic skin response. Support for these amendments may be found in the original specification at page 15, lines 14 and 10-11. Although Applicants have amended claim 1 to include additional limitations, Applicants do not concede that claim 1 as originally filed is not patentable over the art cited by the Office Action. In fact, Applicants reserve the right to pursue these originally filed claims in one or more continuation applications. Applicants submit that these amendments do not introduce any new matter, and submit that the claims as currently amended are in condition for allowance.

Claim Rejections – 35 U.S.C. § 102 Over Weaver

Claims 1-18 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Weaver, *et al.* (U.S. Patent No. 6,796,799 B1). To anticipate claims 1-18 under 35 U.S.C. § 102(e), two basic requirements must be met. The first requirement of anticipation is that Weaver must disclose each and every element and limitation as set forth in the Applicants' claims. The second requirement of anticipation is that Weaver must enable Applicants' claims. Weaver does not meet either requirement and therefore does not anticipate Applicants' claims.

**Weaver Does Not Disclose Each And Every Element
Of The Claims Of The Present Application**

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.

1987). Independent claim 1 of the present application, as currently amended in this response, recites:

1. A method for creating a user metric pattern, the method comprising:

receiving, within a network, a plurality of disparate user metrics from a metric sensor worn by the user, wherein the user metrics represent indications of user conditions, wherein the user condition is selected from the group consisting of:

body temperature, blood pressure, heart rate, and galvanic skin response;

saving the plurality of disparate user metrics;

editing the subset of the saved disparate user metrics including receiving an editing instruction from a user identifying a user metric and deleting the user metric identified in the editing instruction;

identifying a subset of the saved disparate user metrics that comprise a user metric pattern comprising mining the saved disparate user metrics, wherein a user metric pattern is comprised of a plurality of predetermined generic metrics not created specifically for the user and determined to comprise a metric pattern representing a metric state common to many users;

storing the subset of the saved disparate user metrics as a user metric pattern, further comprising:

creating a metric list; and

associating the metric list with a user metric pattern data structure;

associating an action with the metric pattern comprising retrieving an action ID from an action database, wherein the action is designed to administer devices to affect the user metric state defined by the metric pattern.

As explained in more detail below, Weaver does not disclose each and every element of claim 1, and Weaver therefore cannot be said to anticipate the claims of the present application within the meaning of 35 U.S.C. § 102(e).

Weaver Does Not Disclose User Metrics That Represent Indications Of User Conditions, Wherein The User Condition Is Selected From The Group Consisting Of: Body Temperature, Blood Pressure, Heart Rate, And Galvanic Skin Response

The Office Action takes the position that Weaver at paragraphs 006, 054, 055, 058, and 086 discloses a plurality of disparate user metrics from a metric sensor worn by the user. However, Weaver at the cited reference points, discloses behavior indicators. Weaver's behavior indicators do not disclose user metrics, as claimed in the present application. As recited in the above amended claim, a user metric is a representation of user condition wherein the user condition is selected from the group consisting of body temperature, blood pressure, heart rate and galvanic skin response. In contrast to a user metric that is a representation of user condition wherein the user condition is selected from the group consisting of body temperature, blood pressure, heart rate, and galvanic skin response, Weaver's behavior indicators do not indicate user conditions such as body temperature, blood pressure, heart rate, or galvanic skin response. In fact, at no point in the reference does Weaver even mention the key words, "body temperature," "blood pressure," "heart rate," or "galvanic skin response." Because Weaver's behavior indicators do not indicate user conditions such as body temperature, blood pressure, heart rate, or galvanic skin response, Weaver cannot disclose user metrics, as claimed in the present application. As such, Weaver cannot disclose each and every element and limitation of the claims of the

present application, and as such, the rejections under 35 U.S.C. § 102 should be withdrawn.

Weaver Does Not Enable Each And Every Element Of The Claims Of The Present Application

Not only must Weaver disclose each and every element of the claims of the present application within the meaning of *Verdegaal* in order to anticipate Applicants' claims, but also Weaver must be an enabling disclosure of each and every element of the claims of the present application within the meaning of *In re Hoeksema*. In *Hoeksema*, the claims were rejected because an earlier patent disclosed a structural similarity to the Applicant's chemical compound. The court in *Hoeksema* stated: "We think it is sound law, consistent with the public policy underlying our patent law, that before any publication can amount to a statutory bar to the grant of a patent, its disclosure must be such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention." *In re Hoeksema*, 399 F.2d 269, 273, 158 USPQ 596, 600 (CCPA 1968). The meaning of *Hoeksema* for the present case is that unless Weaver places Applicants' claims in the possession of a person of ordinary skill in the art, Weaver is legally insufficient to anticipate Applicants' claims under 35 U.S.C. § 102(b). As explained above, Weaver does not disclose each and every element and limitation of independent claim 1 of the present application. Because Weaver does not disclose each and every element and limitation of the independent claims, Weaver cannot possibly place the elements and limitations of independent claim 1 in the possession of a person of ordinary skill in the art. Weaver cannot, therefore, anticipate claim 1 of the present application.

Relations Among Claims

Independent claims 7 and 13 are system and computer program product claims, respectively, for providing life support services to a user corresponding to independent method claim 1. Claim 1 is allowable for the reasons set forth above. Claims 7 and 13

are allowable for the same reasons that claim 1 is allowable. The rejections of claims 7 and 13 therefore should be withdrawn, and claims 7 and 13 should be allowed.

Claims 2-6, 8-12, and 14-18 depend respectively from independent claims 1, 7, and 13. Each dependent claim includes all of the limitations of the independent claim from which it depends. Because Weaver does not disclose or enable each and every element of the independent claims, Weaver does not disclose or enable each and every element of the dependent claims of the present application. As such, the rejections of claims 2-6, 8-12, and 14-18 should also be withdrawn, and the claims should be allowed.

Conclusion

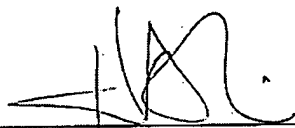
Claims 1-18 stand rejected under 35 U.S.C. § 102 as being anticipated by Weaver. For the reasons set forth above, Weaver does not disclose each and every element of Applicants' claims and does not enable Applicants' claims. Weaver therefore does not anticipate Applicants' claims. Claims 1-18 are therefore patentable and should be allowed. Applicants respectfully traverse each rejection individually, and request reconsideration of claims 1-18.

The Commissioner is hereby authorized to charge or credit Deposit Account No. 09-0447 for any fees required or overpaid.

Respectfully submitted,

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